

Notice of Allowability

Application No.

08/044,240

Examiner

Keith Hendricks

Applicant(s)

MC HALE ET AL.

Art Unit

1761

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address--

All claims being allowable, PROSECUTION ON THE MERITS IS (OR REMAINS) CLOSED in this application. If not included herewith (or previously mailed), a Notice of Allowance (PTOL-85) or other appropriate communication will be mailed in due course. **THIS NOTICE OF ALLOWABILITY IS NOT A GRANT OF PATENT RIGHTS.** This application is subject to withdrawal from issue at the initiative of the Office or upon petition by the applicant. See 37 CFR 1.313 and MPEP 1308.

1. ☒ This communication is responsive to applicant's Brief of 10-25-2005.
2. ☒ The allowed claim(s) is/are 1-28,51-56 and 65-68.
3. ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some* c) ☐ None of the:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this national stage application from the International Bureau (PCT Rule 17.2(a)).

* Certified copies not received: _____.


Applicant has THREE MONTHS FROM THE "MAILING DATE" of this communication to file a reply complying with the requirements noted below. Failure to timely comply will result in ABANDONMENT of this application.

THIS THREE-MONTH PERIOD IS NOT EXTENDABLE.

4. ☐ A SUBSTITUTE OATH OR DECLARATION must be submitted. Note the attached EXAMINER'S AMENDMENT or NOTICE OF INFORMAL PATENT APPLICATION (PTO-152) which gives reason(s) why the oath or declaration is deficient.
5. ☐ CORRECTED DRAWINGS (as "replacement sheets") must be submitted.
- (a) ☐ including changes required by the Notice of Draftsperson's Patent Drawing Review (PTO-948) attached
- 1) ☐ hereto or 2) ☐ to Paper No./Mail Date _____.
- (b) ☐ including changes required by the attached Examiner's Amendment / Comment or in the Office action of Paper No./Mail Date _____.
- Identifying indicia such as the application number (see 37 CFR 1.84(c)) should be written on the drawings in the front (not the back) of each sheet. Replacement sheet(s) should be labeled as such in the header according to 37 CFR 1.121(d).
6. ☐ DEPOSIT OF and/or INFORMATION about the deposit of BIOLOGICAL MATERIAL must be submitted. Note the attached Examiner's comment regarding REQUIREMENT FOR THE DEPOSIT OF BIOLOGICAL MATERIAL.

Attachment(s)

1. ☐ Notice of References Cited (PTO-892)
2. ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3. ☐ Information Disclosure Statements (PTO-1449 or PTO/SB/08), Paper No./Mail Date _____
4. ☐ Examiner's Comment Regarding Requirement for Deposit of Biological Material
5. ☐ Notice of Informal Patent Application (PTO-152)
6. ☐ Interview Summary (PTO-413), Paper No./Mail Date _____
7. ☒ Examiner's Amendment/Comment
8. ☒ Examiner's Statement of Reasons for Allowance
9. ☐ Other _____


KEITH HENDRICKS
PRIMARY EXAMINER

EXAMINER'S AMENDMENT

An examiner's amendment to the record appears below. Should the changes and/or additions be unacceptable to applicant, an amendment may be filed as provided by 37 CFR 1.312. To ensure consideration of such an amendment, it MUST be submitted no later than the payment of the issue fee.

Authorization for this examiner's amendment was given in a telephone interview with Steven Shurtz on April 06, 2006.

Please amend the claims as follows:

Claim 1. A multi colored, sheeted chewing gum product with a top and bottom surface, comprising:

a first mass of chewing gum formed in a generally flat sheet; and

a second mass of a confectionery product having a different color than the first mass, smaller than the first mass, and embedded in the first mass so as to be visible with the first mass from the top surface of the chewing gum product;

the second mass being present in a pattern selected from the group consisting of an undulating pattern, a pattern of stripes across a width of the product, a diagonal pattern, a pattern of bits, and combinations of the foregoing;

wherein only the first mass [~~only~~] is visible from the bottom surface of the chewing gum product.

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Claim 51. A multi colored, sheeted chewing gum product, comprising:

a slab of [~~a first~~] chewing gum having a first flat surface and a second surface; and

a rope of [~~a second~~] confectionery material embedded into the slab of [~~first~~] chewing gum;

the rope being present in an undulating pattern;

wherein the embedded rope of [~~second~~] confectionery material is visible only at the first flat surface in said undulating pattern, and wherein the confectionery material is not visible from the second surface of the chewing gum product.

Claim 52. The product of claim 51, wherein the [~~second~~] confectionery material comprises a second chewing gum.

Claim 53. The product of claim 51, wherein the [~~second~~] confectionery material has a different color than the first chewing gum.

Claim 56. The product of claim 51, prepared according to a method comprising the step of:

forming a mass of [~~first~~] chewing gum into a slab having a first generally flat surface;

forming a rope of [~~second~~] confectionery material; and

pressing the rope into the slab.

The following is an examiner's statement of reasons for allowance:

The closest prior art, Faust (Design Pat. 271,344, applied of record), demonstrates a two-color chewing gum made of a chewing gum mass of two different colors, or perhaps two distinct chewing gum masses of two different colors, wherein both of the colors appear at all sides of the product. This differs from the claimed chewing gum product which is a multi-colored product comprising a first mass of chewing gum, and a second mass of a confectionery product with a different color, which is embedded in

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the first chewing gum mass, and wherein the second (confectionery) "mass is not visible from the bottom surface of the chewing gum product" (claim 51), or "wherein only the first mass is visible from the bottom surface of the chewing gum product" (claim 1). At the time the invention was made, there was no prior art teaching or suggestion to modify this product, such that the instantly-claimed chewing gum product would result.

Any comments considered necessary by applicant must be submitted no later than the payment of the issue fee and, to avoid processing delays, should preferably accompany the issue fee. Such submissions should be clearly labeled "Comments on Statement of Reasons for Allowance."

Notes: The previous restriction requirement as directed to non-elected (withdrawn) claims 7, 11-14, 16-17 and 23-27, has been withdrawn. These claims are rejoined with the previously examined claims, and all are allowed herein.

Claims 1-28, 51-56 and 65-68 are allowed.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Keith Hendricks whose telephone number is (571) 272-1401. The examiner can normally be reached on M-F (8:30am-6pm); First Friday off.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Milton Cano can be reached on (571) 272-1398. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



**KEITH HENDRICKS
PRIMARY EXAMINER**